



NASPL

NORTH AMERICAN ASSOCIATION OF STATE & PROVINCIAL LOTTERIES

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December 11, 2007

Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Valerie A. Abend
Deputy Assistant Secretary of the Treasury,
Office of Critical Infrastructure Protection and Compliance Policy
Main Treasury Building, Room 1327
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

Re: Agency: Treas-DO
Docket Number: Treas-DO-2007-0015

Dear Ms. Johnson and Ms. Abend:

As President of the North American Association of State and Provincial Lotteries (NASPL), I am writing this letter on its behalf. Founded in 1971, NASPL includes among its membership all of the 43 state lotteries in the United States. I am writing to comment on the regulations that have been jointly proposed by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System (the Agencies) relating to the Unlawful Internet Gambling Enforcement Act of 2006 (the Act). Specifically, the proposed regulations fail to implement the provision of the Act that ensures that lawful (excluded) transactions are not blocked (the “overblocking” provision).

The Act prohibits the knowing acceptance by gambling businesses of credit, electronic fund transfers, checks and certain other forms of payment in connection with unlawful Internet gambling by another person. The term “unlawful Internet gambling” expressly excludes a “bet or wager . . . initiated and received or otherwise made exclusively within a single State” as long as the bet “is expressly authorized by and placed in accordance with the laws of such State” and State law or regulations include age and location verification requirements and security standards designed to prevent wagering by minors and persons located out of such State. 31 U.S.C. 5362(10) (B). Thus, the Act permits individual States to allow their State lotteries to use the Internet as a means of commerce within their state.

In directing the Agencies to prescribe regulations designed to “block or otherwise prevent or prohibit restricted transactions” Congress required that any regulations “ensure that transactions in connection with any activity excluded from the definition of unlawful internet gambling ... are not blocked or otherwise prevented or prohibited by the prescribed regulations.” 31 U.S.C. 5364 (b) (4) (citations omitted). Contrary to this provision of the Act, the proposed regulations fail to ensure that excluded transactions are not blocked.

The Agencies state that section 5 of the Proposed Rules implements the Act’s overblocking provision . Proposed Rules, Supplementary Information, p. 18-19. Rather than specifically requiring that excluded transactions not be blocked, the proposed regulations only state this requirement in the negative by stating “nothing in this regulation requires or is intended to suggest that designated payment systems must or should block ... any transaction ... that is excluded from the definition of “unlawful Internet gambling” ...”. Proposed Regulations, § ___.5 (d). NASPL respectively requests that the Act’s requirement of an overblocking provision be implemented by specifically requiring payment systems **not** to block excluded transactions.

In fact, the proposed regulations actually permit overblocking. Under the regulations, it is the card systems, not the Agencies, who are to “establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions.” Proposed Regulations, § ___.5 (a). However, if the policies implemented by the card system block legal transactions, the card system is immune from liability as long as it has relied on “the policies and procedures ... in an effort to comply with the regulations.” Proposed Regulations, § ___.5 (c) (3). In other words, as long as card systems follow their own rules which are reasonably designed to prevent or prohibit restricted transactions, they are immune from liability for overblocking.

We understand that the Agencies may be reluctant to implement an effective overblocking provision because payment system lobbyists “have informally indicated to the Agencies that many participants in their systems prefer not to process gambling-related transactions because they have experienced higher-than-usual losses due, for example, to assertions that gambling transactions were ‘unauthorized’.” (Proposed Regulations, Supplementary Information, p. 19, footnote 15).

The informal statements of lobbyists are not a legal basis for not implementing a specific requirement of the Act, namely to ensure excluded transactions are not prevented or prohibited. Furthermore, there is nothing in the record to indicate that payment systems have had higher than usual losses from lottery-related transactions.

Payments industry and NASPL representatives recently discussed recommendations on how to fairly identify, evaluate and process lawful gambling transaction requests. Payments industry representatives expressed concerns to NASPL that changing the Proposed Rules requiring payment card issuers to not block **any** lawful gambling transactions from State lottery organizations would impact their ability to control allowable card usage and risk management in regards to gambling transactions.

Payments industry representatives also emphasized that individual payments industry card issuers may wish to *decline* lawful gambling transactions for reasons **other than** compliance with the proposed regulations. NASPL stated its desire for the payments industry to avoid **automatic** blocking of all gambling transactions from lawful State lottery organizations.

NASPL and the payments industry *agree* that the ability to identify and block certain transactions is an important filtering tool for processing gambling transaction requests. Today, a *single* Merchant Category Code option (MCC 7995) is available for assignment to any lawful State lottery organization applying for merchant status; usage of this MCC code would cause lawful lottery purchase transactions to be blocked. This is because MCC 7995 transaction detection schemes are in widespread use within payment industry transaction systems. MCC 7995 transaction detection and blocking appears to represent a key strategy for the payments industry to comply with the proposed regulations.

NASPL requests that the Agencies amend the proposed regulations to require the payment industries to assign distinct MCC codes for use by lawful government lottery organizations, such as state lotteries, all of which are NASPL members. NASPL members have the tools to ensure that Internet transactions are lawful, namely that the transactions are initiated and received within its state and that there is appropriate age verification to prevent persons under the legal age in that state from participating. Payment card issuers/acquirers would thereafter be able to distinctly *identify and process* transaction requests originating from lawful government lottery organizations while retaining the ability to (1) decline to process lawful gambling transactions *for reasons other than* compliance with the Proposed Rules, or (2) to accept and *process* these transactions as normal purchases. Further, NASPL requests that the Agencies exempt processing of transaction requests from lawful government lottery organizations from regulatory enforcement under the Act.

For the reasons stated above, NASPL respectfully requests that the Agencies amend the proposed regulations to prevent the blocking of excluded transactions by requiring that payment systems create a specific merchant category code for transaction messages from State lotteries.

Sincerely,

A handwritten signature in black ink that reads "Ernie Passailaigue". The signature is written in a cursive, flowing style.

Ernie Passailaigue,
President, North American Association of State and Provincial Lotteries
Executive Director, South Carolina Education Lottery